

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LOUISE M. JADWISIAK,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:08CV743 HEA
)	
UNITED HEALTH CARE INSURANCE)	
CO.,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Motion to Amend to Allow Plaintiff to Replead Count I to Allege ERISA 502(A)(1)(B) Failure to Pay Plan Benefit and to Plead ERISA Estoppel or Alternatively to State Cause of Action for Misrepresentation under This Court's Supplemental Jurisdiction, [Doc. No. 18]. Defendant does not oppose amendment of the ERISA claim, but argues that Plaintiff's state law claim for misrepresentation is preempted by ERISA. For the reasons set forth below, the Motion is granted.

Keeping in mind that leave to file amended complaints should be freely granted under the Federal Rules of Civil Procedure, the Motion will be granted. Although Defendant argues that Plaintiff's state law claim of misrepresentation is completely preempted by ERISA, there is authority which suggests otherwise. See,

Stewart v. Pershing Health System, 182 F.Supp.2d 856 (E.D.Mo.2001); *St. John's Mercy Health System v. Healthlink, Inc.*, 2008 WL 4204721 (E.D.Mo.). (“Like Judge Noce, I find that these defendants can be sued for their misrepresentations that were made not as plan fiduciaries or for their administration of the ERISA plan.”)

Defendants will, of course, be free to challenge any amendments filed in accordance with the Federal Rules of Civil Procedure and other applicable law.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s Motion to Amend to Allow Plaintiff to Replead Count I to Allege ERISA 502(A)(1)(B) Failure to Pay Plan Benefit and to Plead ERISA Estoppel or Alternatively to State Cause of Action for Misrepresentation under This Court’s Supplemental Jurisdiction, [Doc. No. 18], is granted.

IT IS FURTHER ORDERED that Plaintiff is given 14 days from the date of this Order to file an Amended Complaint.

Dated this 29th day of September, 2008.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE